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SENATE BILL 3424
By Jackson

AN ACT to amend Tennessee Code Annotated, Title 8 and Title 71, relative to the regulation of insurance and the administration of TennCare.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-5-128, is amended by designating the existing language as subsection (b) and by adding the following as subsection (a):

(a) The commissioner shall not contract with any health maintenance organization to administer any aspect of the TennCare program, unless the contract provides for the organization to bear financial risk in an amount at least equal to that imposed on TennCare managed care organizations, other than the managed care organizations administering TennCare Select, prior to May 1, 2002. As used in this section, "TennCare Select" means the TennCare plan to provide back-up services as necessary and to provide services for certain children and other specific populations known administratively by the name "TennCare Select".

SECTION 2. Tennessee Code Annotated, Section 8-27-102, is hereby amended by adding the following subsection:

(d) The state insurance committee shall not enter into a contract for any services relating to the administration of the plans authorized by this chapter with any hospital and medical service corporation, insurance company, claims administrator or other organization that, if requested to administer TennCare benefits as a risk contractor under title 71, chapter 5, has refused to do so. This provision applies to any contract entered into, renewed, modified or amended on or after the effective date of this act.

SECTION 3. Tennessee Code Annotated, Section 8-27-301, is hereby amended by adding the following subsection:

(h) The local education insurance committee shall not approve any plan authorized under this chapter that is offered or administered by any hospital and medical service corporation, insurance company, claims administrator or other organization that, if requested to administer TennCare benefits as a risk contractor under title 71, chapter 5, has refused to do so. This provision applies to any contract entered into, renewed, modified or amended on or after the effective date of this act.

SECTION 4. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new, appropriately designated section thereto:

(a)

(1) The commissioner of finance and administration shall convene an advisory committee to oversee the establishment and operation of disease management programs for TennCare enrollees. The committee shall consist of the following individuals or their designees:

(A) The comptroller of the treasury;

(B) The vice chancellor for medical affairs of Vanderbilt University;

(C) The chancellor and vice-president for health affairs of the University of Tennessee;

(D) The president of Meharry Medical College; and

(E) The dean of medicine and vice president of health affairs of the Quillen College of Medicine of East Tennessee State University.

(2) The committee shall advise the commissioner regarding the development and implementation of a plan for an effective program of disease management, with short, intermediate and long-term objectives. The committee shall advise the commissioner regarding how to phase in the program, starting with the identification of those illnesses with the greatest immediate potential for savings and improved care, and including recommendations for extension of the program to include additional illnesses as practicable.

(b) The comptroller of the treasury shall submit a report to the fiscal review committee of the general assembly and to the speaker of the senate and the speaker of the house of representatives by January 15, 2007, and annually thereafter until January 15, 2009, reporting on the commissioner's progress in implementing the recommendations of the advisory committee and in operating an effective program of disease management for TennCare enrollees. The advisory committee shall review the report and append thereto its comments on the matters reported by the comptroller.

SECTION 5. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) The comptroller of the treasury shall enter into a consulting contract with an individual or firm with demonstrated expertise in the evaluation and design of pharmacy benefit management and cost control programs, for the following purposes:

(1) To assist the comptroller in evaluating the efficacy of TennCare's pharmacy benefit manager and TennCare's programs of prospective and retrospective drug use review, including the use of data from such programs to improve program integrity, clinical quality and financial performance; and

(2) To recommend and monitor the implementation of any changes needed for the improvement of TennCare drug use review activities and the use

of drug use review data to improve program integrity, clinical quality and financial performance.

(b) The bureau of TennCare shall seek the cooperation of the Tennessee Medical Association and other willing state or local professional medical organizations to more effectively employ drug use review data to improve clinical care and reduce medical costs. The program shall involve peer counseling pursuant to the guidance of the Tennessee Medical Association and other appropriate state or local professional medical organizations to provide prescribers with information as to prescriptive patterns, practices, and the cost effectiveness of drugs prescribed.

(c) The comptroller of the treasury shall submit a report to the fiscal review committee of the general assembly and to the speaker of the senate and the speaker of the house of representatives by March 31, 2006, and by January 15 of each year thereafter until January 15, 2009. Each such report shall evaluate the performance of the pharmacy benefit manager. Each report shall also evaluate the efficacy of TennCare drug use review activities and of TennCare's use of drug use review data to improve program integrity, clinical quality and financial performance.

SECTION 6. Tennessee Code Annotated Title 71, Chapter 5, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

Each hospital that receives essential access hospital payments shall comply with the following:

(1) Each hospital shall annually submit to the bureau of TennCare a report accounting for its use of such payments. Each hospital's report shall be available for public inspection at the facility and shall be posted on the web site of the bureau. The report, which shall be subject to audit by the comptroller of the

treasury and shall be filed under penalty of perjury, shall contain the following information:

(A) The amount of essential care payments received by the hospital during the most recent accounting period for which audited financial reports are available;

(B) The amount of Medicare disproportionate share hospital payments received by the hospital during the same period;

(C) The amount of any local government or other public funding received by the hospital during the same period, other than reimbursement for the care of identified individual patients;

(D)

(i) The cost of unreimbursed essential care provided by the facility during the same period. Such care consists of the aggregate cost of medically necessary patient care provided by the facility, exclusive of:

(*a*) Emergency care that the hospital is legally obligated to provide regardless of whether it receives essential access payments;

(*b*) Care for which the facility has received full or partial reimbursement from a third party public or private health plan and has agreed to accept such reimbursement as payment in full;

(*c*) Services which are covered by a public or private research grant; and

(*d*) Care which has been reimbursed by the patient or other individual acting on the patient's behalf;

(ii) The cost of such care shall be calculated by multiplying the charges for the care by the cost to charge ratio reported on the hospital's joint annual report filed pursuant to §68-11-310;

(E) The amount of unreimbursed essential care provided by the hospital, stated as a percentage of the hospital's net patient revenues reported on its joint annual report filed pursuant to §68-11-310; and

(F) Such additional information as the commissioner may by regulation require; and

(2) Each hospital shall post conspicuously in public areas of its emergency department, admitting office and patient accounts office, and shall print in legible text on all patient bills the following statement:

This hospital receives funding from Tennessee taxpayers through special payments from the bureau of TennCare. This hospital receives these payments, which are in addition to payments for the care of individual TennCare patients, because the hospital qualifies as an "essential access hospital". In return for these payments, this hospital has certified to the state of Tennessee that it provides access to essential hospital care to members of the public. These services are in addition to the emergency medical services required of all Tennessee hospitals by federal and state law. This hospital's most recent report as an essential access hospital is available for public inspection on the website for the bureau of TennCare, or you may contact _____ to see the report on our premises.

If you have reason to believe that this hospital is not assuring access to essential services for members of the public, or if you have any questions regarding the hospital's satisfaction of its duty to the public as an essential

access hospital, you may contact the TennCare office of inspector general at [toll-free telephone number].

SECTION 7. Tennessee Code Annotated, Section 71-5-2505, is amended by inserting the following as a new subdivision (12) thereto:

(12) Receive and investigate complaints that a hospital that has received essential access hospital payments under this title has failed or refused to provide access to essential care for a patient who lacks adequate insurance or means to pay for his care.

SECTION 8. Tennessee Code Annotated Title 71, Chapter 5, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) There shall be open and continuous enrollment in TennCare of persons who are uninsurable or medically eligible because they have a pre-existing medical condition that prevents them from obtaining commercial health insurance. Except in the case of those persons who have submitted documentation to the satisfaction of the bureau that they are uninsurable or otherwise medically eligible, each person requesting continuation of such coverage shall submit an application that shall be reviewed by an independent medical underwriter under contract with the bureau to determine whether an applicant's condition or combination of conditions renders the applicant commercially uninsurable.

(b) The comptroller of the treasury shall determine annually, through an actuarial study, the amount of premium that persons of similar financial demographic characteristics must contribute in order that, when such amount is combined with all available federal funds, such amount is sufficient to cover the costs of participation of such person in TennCare. Any person with an income above two hundred percent (200%) of the federal poverty level shall be required to pay such amount as a premium

for participation. Any person with an income below two hundred percent (200%) of the federal poverty level shall pay a premium set on a sliding scale that reflects ability to pay, but that is not designed to cover the cost of participation of such person in TennCare.

SECTION 9. Tennessee Code Annotated Title 71, Chapter 5, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) The bureau of TennCare shall provide coverage for prescription drugs or their less costly over-the-counter equivalents, if any, without regard to any numerical limit imposed by other law or regulation, if:

(1) Such drug therapy is prescribed as part of a program of disease management; or

(2)

(A) The patient is not eligible to participate in a disease management program that covers the disease for which a drug is being prescribed, and the prescriber certifies that the prescribed drug is:

(i) Necessary to protect the life or safety of the patient; or

(ii) Likely to be cost-effective, taking into account the risk to TennCare of incurring other direct or indirect expenses if the patient is denied the prescribed drug therapy.

(B) The bureau of TennCare may promulgate guidelines for prescribers to follow when making the certifications required by this section.

(b) The comptroller shall submit a report to the speaker of the senate and the speaker of the house of representatives and to the chairs of the fiscal review committee of the general assembly and the TennCare

oversight committee of the general assembly by January 31, 2007. The report shall provide the following information:

(1) The number of persons receiving prescription drugs authorized by this section;

(2) The types of drugs dispensed pursuant to this section;

(3) The cost of drugs authorized by this section; and

(4) The estimated savings, through the prevention of increases in other medical expenses, resulting from the dispensing of drugs pursuant to this section.

(c) This section shall expire on July 1, 2007, unless reauthorized by the general assembly.

SECTION 10. Tennessee Code Annotated, Section 71-5-144, is amended by deleting subsections (b) and (c) in their entirety and substituting instead the following:

(b) To be determined to be medically necessary, a service must be:

(1) Required to identify or treat a TennCare enrollee's illness or injury;

(2) Consistent with the symptoms or diagnosis and treatment of the enrollee's condition, disease, ailment or injury;

(3) Appropriate with regard to standards of good medical practice;

(4) Not solely for the convenience of an enrollee, physician or other provider;

(5) The most appropriate supply or level of services which can safely be provided to the enrollee;

(6) The most cost-effective type and quantity of treatment for the enrollee's condition, illness, ailment or injury, as determined by comparing the prescribed service's anticipated direct and indirect costs to the TennCare

program against the direct and indirect costs to the TennCare program of any alternative, equally effective courses of treatment that are available; and

(7) Not be an experimental or investigational service.

(c) In the case of an enrollee under the age of twenty-one (21), services shall be deemed to be medically necessary if they are required by federal laws and regulations to be covered as early and periodic, screening, diagnosis and treatment (EPSDT) services.

SECTION 11. If any of this act or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. The provisions of this act shall take effect upon becoming a law, the public welfare requiring it.